

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5590 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AMBALAL B VAGHRI & OTHERS

Versus

COLLECTOR AHMEDABAD & OTHERS

Appearance:

MR MUKESH R SHAH for Petitioners

MR NN PANDYA for Respondents No. 1 and 2

None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 25/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. The petitioners, in all four in number, filed this Special Civil Application before this Court challenging therein the notice annexure 'A' of the Prant Officer, Viramgam Prant, Ahmedabad. Under this notice, the petitioners were directed to hand over the vacant possession of the land in their occupation. The petitioners were stated to

be in occupation of the Government land over which they had made encroachment. The petitioners have stated in the writ petition that all of them are the residents of Village Dehgam, District, Ahmedabad and they are carrying on small business by having vegetable shop, pan galla, tobacco and provision store. They are carrying on their aforesaid small businesses by putting their cabins on the road side on the Dehgam Modasa Road. The petitioners have further stated that most of the cabins are regularised by the panchayat and the rent receipts are issued by the panchayat in their favour. It has further been stated that those cabins are being placed within the part of Dehgam village and it is known as Dehgam Modas Road and that all the cabins are placed at a distance of 200 ft. away from the main road and there is no encroachment. They have not violated any of the provisions of the Panchayat Act or Bombay Land Revenue Code or Land Ribbon Rules. It is further case of the petitioners that Dehgam Nagar Panchayat has issued the receipts to them of recovering the taxes for the said cabins. They have also been issued the certificate under the Shop & Commercial Establishment Act for the cabins.

2. The prayer has been made by the petitioners in this Special Civil Application that by issuing a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order, directing the respondents not to disturb and/or demolish the cabins of the petitioners situated at Dehgam Modasa Road, Tal. Dehgam District Ahmedabad and be pleased to declare the impugned action of the respondents is violative of Article 14 of the Constitution of India and without authority at law. The interim relief has been prayed in this Special Civil Application. This court on 23rd November, 1983 issued notice to the respondent and by way of ad-interim relief it has been ordered that further proceedings of the eviction in the meantime are stayed. Thereafter, rule has been issued on 7-12-1983 and ad-interim relief granted earlier was ordered to be continued.

3. The respondent no.2 has filed the reply to this special civil application. In the reply the respondent no.2 has come up with a case that the petitioners have put their cabins on public road. It has further been stated that the petitioners have made the encroachment upon the land which belongs to the State Government. The respondent no.2 has made a statement that the Gram Panchayat has no power to regularise the encroachment or to collect the rent or tax from the cabin holders on the Government land. The respondent no.2 has stated on oath

that the cabins of the petitioners are at a distance of 34 to 28 feet away from the road, and in case of the encroachment made by the petitioners over the Government land, the State Government has all the power to remove such unauthorised encroachment. The respondent no.2 has further stated that as the cabins of the petitioners are quite near to the main road, this creates obstruction for the traffic. The land on both the sides of the road had been allotted to P.W.D. and the same belongs to the State Government. The further averment has been made that the petitioners have an alternative remedy to prefer a revision application before the Secretary (Revenue), Government of Gujarat.

4. The learned counsel for the petitioners contended that the petitioners are carrying on their business in the said cabins for the last 35 years. Their possession has also been regularised by the Panchayat and the Panchayat has received rent and tax from them. On the other hand, learned counsel for the respondents Shri N.N. Pandya, contended that the petitioners have no legal right whatsoever to come before this Court when the petitioners have made the encroachment on the public road over the Government land. They have no right, title or interest whatsoever in the land. The obstruction made by the petitioners on the public road is causing traffic hazard. The petitioners have rightly been asked to vacate the land as they have no right whatsoever. None of the legal and fundamental rights of the petitioners have been infringed and so this writ petition is not maintainable.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. This Court cannot be oblivious of the fact that the petitioners have been protected by grant of the interim relief in the year 1983 and that interim relief continues for all these years. But at the same time, this Court cannot be oblivious of the another important fact that the encroachment on the public road or the Government land adjacent to the roads is a serious matter and it affects the public at large. The petitioners have failed to establish any right, title or interest in the land. The petitioners have not disputed that the land on which their cabins are there is not their own land. The dispute has been raised that this land belongs to the Panchayat and not to the State Government. The petitioners have come up with a case that their possession over the land has been regularised by the Gram Panchayat, and the Gram Panchayat has also recovered from them the rent and the tax. The petitioners have not

produced any document on record where from it may come out that the Gram Panchayat has regularised their encroachment. The learned counsel for the respondents Shri N.N. Pandya contended that the Gram Panchayat has no power whatsoever to regularise the possession of the petitioners on the Government land. I do not think it proper to decide on all these questions in this Special Civil Application at this stage. But the fact remains that nothing has been produced on record by the petitioners to justify their possession over the Government land or the Gram Panchayat land. The rent receipts or tax receipts have also not been produced. The petitioners have also not put any material on the record to establish that they are in possession of the land for the last 35 years. Though the petitioners prima-facie have no legal or fundamental right to continue in the possession of the Government or Gram Panchayat land, which fact is to be decided, but the fact that for all the years this Court has protected them by grant of interim relief, the interest of justice will be served in case this Special Civil Application is disposed of with the direction that the petitioners shall make a detailed reply to the notice given to them annexure 'A' taking therein all the defence available to them and shall produce all the relevant material evidence in support of their claim. The petitioners will file the reply to the said notice within a period of two months from today with all the necessary documentary evidence. The petitioners will submit their reply to the Mamlatdar, Dehgam, Dist. Ahmedabad. The Mamlatdar after receipt of the reply within one month thereafter will make his comments thereon and thereafter the complete record will be sent to the Collector, Ahmedabad, who will decide finally the matter after giving an opportunity of hearing to the petitioners, if they so desire. In case the Collector, Ahmedabad decides that this is a case of encroachment over the Government land then the petitioners shall voluntarily surrender the possession of the land to the concerned authority. The Collector, Ahmedabad shall pass a speaking order. The interim relief granted by this Court shall continue till the matter is finally decided by the Collector, Ahmedabad. Rule is made absolute in the aforesaid terms with no order as to costs.
